

REFERENCE TITLE: juvenile adjudications; probation; disposition

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

# **SB 1401**

Introduced by  
Senator Verschoor

AN ACT

AMENDING SECTIONS 8-321, 8-341, 8-352 AND 8-354, ARIZONA REVISED STATUTES;  
RELATING TO JUVENILES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-321, Arizona Revised Statutes, is amended to  
3 read:

4 8-321. Referrals; diversions; conditions; community based  
5 alternative programs

6 A. Except as provided in subsection B of this section, before a  
7 petition is filed or an admission or adjudication hearing is held, the county  
8 attorney may divert the prosecution of a juvenile who is accused of  
9 committing a delinquent act or a child who is accused of committing an  
10 incorrigible act to a community based alternative program or to a diversion  
11 program administered by the juvenile court.

12 B. A juvenile is not eligible for diversion if any of the following  
13 ~~apply to the juvenile~~ APPLIES:

14 1. THE JUVENILE committed a dangerous offense as defined in section  
15 13-105.

16 2. THE JUVENILE is a chronic felony offender as defined in section  
17 13-501.

18 3. THE JUVENILE committed an offense that is listed in section 13-501.

19 4. THE JUVENILE is alleged to have committed a violation of section  
20 28-1381, 28-1382 or 28-1383.

21 C. Except as provided in section 8-323, the county attorney has sole  
22 discretion to decide whether to divert or defer prosecution of a juvenile  
23 offender. The county attorney may designate the offenses that shall be  
24 retained by the juvenile court for diversion or that shall be referred  
25 directly to a community based alternative program.

26 D. The county attorney or the juvenile court in cooperation with the  
27 county attorney may establish community based alternative programs.

28 E. Except for offenses that the county attorney designates as eligible  
29 for diversion or referral to a community based alternative program, on  
30 receipt of a referral alleging the commission of an offense, the juvenile  
31 probation officer shall submit the referral to the county attorney to  
32 determine if a petition should be filed.

33 F. If the county attorney diverts the prosecution of a juvenile to the  
34 juvenile court, the juvenile probation officer shall conduct a personal  
35 interview with the alleged juvenile offender. At least one of the juvenile's  
36 parents or guardians shall attend the interview. The probation officer may  
37 waive the requirement for the attendance of the parent or guardian for good  
38 cause. If the juvenile acknowledges responsibility for the delinquent or  
39 incorrigible act, the juvenile probation officer shall require that the  
40 juvenile comply with one or more of the following conditions:

41 1. Participation in unpaid community restitution work.

42 2. Participation in a counseling program that is approved by the court  
43 and that is designed to strengthen family relationships and to prevent  
44 repetitive juvenile delinquency.

1           3. Participation in an education program that is approved by the court  
2 and that has as its goal the prevention of further delinquent behavior.

3           4. Participation in an education program that is approved by the court  
4 and that is designed to deal with ancillary problems experienced by the  
5 juvenile, such as alcohol or drug abuse.

6           5. Participation in a nonresidential program of rehabilitation or  
7 supervision that is offered by the court or offered by a community youth  
8 serving agency and approved by the court.

9           6. Payment of restitution to the victim of the delinquent act.

10          7. Payment of a monetary assessment.

11          G. If the juvenile successfully complies with the conditions set forth  
12 by the probation officer, the county attorney shall not file a petition in  
13 juvenile court and the program's resolution shall not be used against the  
14 juvenile in any further proceeding and is not an adjudication of  
15 incorrigibility or delinquency. The resolution of the program is not a  
16 conviction of crime, does not impose any civil disabilities ordinarily  
17 resulting from a conviction and does not disqualify the juvenile in any civil  
18 service application or appointment.

19          H. In order to participate in a community based alternative program  
20 the juvenile who is referred to a program shall admit responsibility for the  
21 essential elements of the accusation and shall cooperate with the program in  
22 all of its proceedings.

23          I. All of the following apply to each community based alternative  
24 program that is established pursuant to this section:

25           1. The juvenile's participation is voluntary.

26           2. The victim's participation is voluntary.

27           3. The community based alternative program shall ensure that the  
28 victim, the juvenile's parent or guardian and any other persons who are  
29 directly affected by an offense have the right to participate.

30           4. The participants shall agree to the consequences imposed on the  
31 juvenile or the juvenile's parent or guardian.

32           5. The meetings and records shall be open to the public.

33          J. After holding a meeting the participants in the community based  
34 alternative program may agree on any legally reasonable consequences that the  
35 participants determine are necessary to fully and fairly resolve the matter  
36 ~~except confinement.~~

37          K. The participants shall determine consequences within thirty days  
38 after referral to the community based alternative program, and the juvenile  
39 shall complete the consequences within ninety days after the matter is  
40 referred to the community based alternative program. The county attorney or  
41 the juvenile probation officer may extend the time in which to complete the  
42 consequences for good cause. If the community based alternative program  
43 involves a school, the deadlines for determination and completion of  
44 consequences shall be thirty and ninety school days, respectively.

1 L. The community based alternative program, the juvenile, the  
2 juvenile's parent or guardian and the victim may sign a written contract in  
3 which the parties agree to the program's resolution of the matter and in  
4 which the juvenile's parent or guardian agrees to ensure that the juvenile  
5 complies with the contract. The contract may provide that the parent or  
6 guardian shall post a bond payable to this state to secure the performance of  
7 any consequence imposed on the juvenile pursuant to subsection J of this  
8 section.

9 M. If the juvenile successfully completes the consequences, the county  
10 attorney shall not file a petition in juvenile court and the program's  
11 resolution shall not be used against the juvenile in any further proceeding  
12 and is not an adjudication of incorrigibility or delinquency. The resolution  
13 of the program is not a conviction of crime, does not impose any civil  
14 disabilities ordinarily resulting from a conviction and does not disqualify  
15 the juvenile in any civil service application or appointment.

16 N. The county attorney or juvenile court shall assess the parent of a  
17 juvenile who is diverted pursuant to subsection A of this section a fee of  
18 fifty dollars unless, after determining the inability of the parent to pay  
19 the fee, the county attorney or juvenile court assesses a lesser amount. All  
20 monies assessed pursuant to this subsection shall be used for the  
21 administration and support of community based alternative programs or  
22 juvenile court diversion programs. Any amount greater than forty dollars of  
23 the fee assessed pursuant to this subsection shall only be used to supplement  
24 monies currently used for the salaries of juvenile probation and surveillance  
25 officers and for support of programs and services of the superior court  
26 juvenile probation departments. The clerk of the superior court shall pay  
27 all monies collected from this assessment to the county treasurer for deposit  
28 in the juvenile probation fund, to be utilized as provided in section 12-268,  
29 and the county attorney shall pay all monies collected from this assessment  
30 into the county attorney juvenile diversion fund established by section  
31 11-537.

32 O. The supreme court shall annually establish an average cost per  
33 juvenile for providing diversion services in each county, based on the monies  
34 appropriated for diversion pursuant to section 8-322, excluding the cost of  
35 juvenile intake services provided by the juvenile court, and the number of  
36 juveniles diverted the previous year. On the county attorney's certification  
37 to the supreme court of the number of juveniles diverted to a county attorney  
38 community based alternative program each quarter, the annual average cost per  
39 juvenile for each juvenile diverted shall be reimbursed to the county  
40 attorney juvenile diversion fund established by section 11-537 out of monies  
41 appropriated to the supreme court for diversion programs.

42 P. If the juvenile does not acknowledge responsibility for the  
43 offense, or fails to comply with the consequences set by the community based  
44 alternative program, the case shall be submitted to the county attorney for  
45 review.

1 Q. After reviewing a referral, if the county attorney declines  
2 prosecution, the county attorney may return the case to the juvenile  
3 probation department for further action as provided in subsection F of this  
4 section.

5 Sec. 2. Section 8-341, Arizona Revised Statutes, is amended to read:  
6 8-341. Disposition and commitment: definitions

7 A. After receiving and considering the evidence on the proper  
8 disposition of the case, the court may enter judgment as follows:

9 1. It may award a delinquent juvenile:

10 (a) To the care of the juvenile's parents, subject to the supervision  
11 of a probation department.

12 (b) To a probation department, subject to any conditions the court may  
13 impose, including a period of incarceration in a juvenile detention center of  
14 not more than one year.

15 (c) To a reputable citizen of good moral character, subject to the  
16 supervision of a probation department.

17 (d) To a private agency or institution, subject to the supervision of  
18 a probation officer.

19 (e) To the department of juvenile corrections.

20 (f) To maternal or paternal relatives, subject to the supervision of a  
21 probation department.

22 (g) To an appropriate official of a foreign country of which the  
23 juvenile is a foreign national who is unaccompanied by a parent or guardian  
24 in this state to remain on unsupervised probation for at least one year on  
25 the condition that the juvenile cooperate with that official.

26 2. It may award an incorrigible child:

27 (a) To the care of the child's parents, subject to the supervision of  
28 a probation department.

29 (b) To the protective supervision of a probation department, subject  
30 to any conditions the court may impose.

31 (c) To a reputable citizen of good moral character, subject to the  
32 supervision of a probation department.

33 (d) To a public or private agency, subject to the supervision of a  
34 probation department.

35 (e) To maternal or paternal relatives, subject to the supervision of a  
36 probation department.

37 B. If a juvenile is placed on probation pursuant to this section, the  
38 period of probation may continue until the juvenile's eighteenth birthday,  
39 except that the term of probation shall not exceed one year if all of the  
40 following apply:

41 1. The juvenile is not charged with a subsequent offense.

42 2. The juvenile has not been found in violation of a condition of  
43 probation.

44 3. The court has not made a determination that it is in the best  
45 interests of the juvenile or the public to require continued

1 supervision. The court shall state by minute entry or written order its  
2 reasons for finding that continued supervision is required.

3 4. The offense for which the juvenile is placed on probation does not  
4 involve a dangerous offense as defined in section 13-105.

5 5. The offense for which the juvenile is placed on probation does not  
6 involve a violation of title 13, chapter 14 or 35.1.

7 6. Restitution ordered pursuant to section 8-344 has been made.

8 7. THE JUVENILE'S PARENTS HAVE NOT REQUESTED THAT THE COURT CONTINUE  
9 THE JUVENILE'S PROBATION FOR MORE THAN ONE YEAR.

10 C. If a juvenile is adjudicated as a first time felony juvenile  
11 offender, the court shall provide the following written notice to the  
12 juvenile:

13 You have been adjudicated a first time felony juvenile  
14 offender. You are now on notice that if you are adjudicated of  
15 another offense that would be a felony offense if committed by  
16 an adult and if you commit the other offense when you are  
17 fourteen years of age or older, you will be placed on juvenile  
18 intensive probation, which may include home arrest and  
19 electronic monitoring, or you may be placed on juvenile  
20 intensive probation and may be incarcerated for a period of time  
21 in a juvenile detention center, or you may be committed to the  
22 department of juvenile corrections or you may be prosecuted as  
23 an adult. If you are convicted as an adult of a felony offense  
24 and you commit any other offense, you will be prosecuted as an  
25 adult.

26 D. If a juvenile is fourteen years of age or older and is adjudicated  
27 as a repeat felony juvenile offender, the juvenile court shall place the  
28 juvenile on juvenile intensive probation, which may include home arrest and  
29 electronic monitoring, may place the juvenile on juvenile intensive  
30 probation, which may include incarceration for a period of time in a juvenile  
31 detention center, or may commit the juvenile to the department of juvenile  
32 corrections pursuant to subsection A, paragraph 1, subdivision (e) of this  
33 section for a significant period of time.

34 E. If the juvenile is adjudicated as a repeat felony juvenile  
35 offender, the court shall provide the following written notice to the  
36 juvenile:

37 You have been adjudicated a repeat felony juvenile  
38 offender. You are now on notice that if you are arrested for  
39 another offense that would be a felony offense if committed by  
40 an adult and if you commit the other offense when you are  
41 fifteen years of age or older, you will be tried as an adult in  
42 the criminal division of the superior court. If you commit the  
43 other offense when you are fourteen years of age or older, you  
44 may be tried as an adult in the criminal division of the  
45 superior court. If you are convicted as an adult, you will be

1 sentenced to a term of incarceration. If you are convicted as  
2 an adult of a felony offense and you commit any other offense,  
3 you will be prosecuted as an adult.

4 F. The failure or inability of the court to provide the notices  
5 required under subsections C and E of this section does not preclude the use  
6 of the prior adjudications for any purpose otherwise permitted.

7 G. Except as provided in subsection S of this section, after  
8 considering the nature of the offense and the age, physical and mental  
9 condition and earning capacity of the juvenile, the court shall order the  
10 juvenile to pay a reasonable monetary assessment if the court determines that  
11 an assessment is in aid of rehabilitation. If the director of the department  
12 of juvenile corrections determines that enforcement of an order for monetary  
13 assessment as a term and condition of conditional liberty is not  
14 cost-effective, the director may require the youth to perform an equivalent  
15 amount of community restitution in lieu of the payment ordered as a condition  
16 of conditional liberty.

17 H. If a child is adjudicated incorrigible, the court may impose a  
18 monetary assessment on the child of not more than one hundred fifty dollars.

19 I. A juvenile who is charged with unlawful purchase, possession or  
20 consumption of spirituous liquor is subject to section 8-323. The monetary  
21 assessment for a conviction of unlawful purchase, possession or consumption  
22 of spirituous liquor by a juvenile shall not exceed five hundred dollars.  
23 The court of competent jurisdiction may order a monetary assessment or  
24 equivalent community restitution.

25 J. The court shall require the monetary assessment imposed under  
26 subsection G or H of this section on a juvenile who is not committed to the  
27 department of juvenile corrections to be satisfied in one or both of the  
28 following forms:

29 1. Monetary reimbursement by the juvenile in a lump sum or installment  
30 payments through the clerk of the superior court for appropriate  
31 distribution.

32 2. A program of work, not in conflict with regular schooling, to  
33 repair damage to the victim's property, to provide community restitution or  
34 to provide the juvenile with a job for wages. The court order for  
35 restitution or monetary assessment shall specify, according to the  
36 dispositional program, the amount of reimbursement and the portion of wages  
37 of either existing or provided work that is to be credited toward  
38 satisfaction of the restitution or assessment, or the nature of the work to  
39 be performed and the number of hours to be spent working. The number of  
40 hours to be spent working shall be set by the court based on the severity of  
41 the offense but shall not be less than sixteen hours.

42 K. If a juvenile is committed to the department of juvenile  
43 corrections, the court shall specify the amount of the monetary assessment  
44 imposed pursuant to subsection G or H of this section.

1 L. After considering the length of stay guidelines developed pursuant  
2 to section 41-2816, subsection C, the court may set forth in the order of  
3 commitment the minimum period during which the juvenile shall remain in  
4 secure care while in the custody of the department of juvenile corrections.  
5 When the court awards a juvenile to the department of juvenile corrections or  
6 an institution or agency, it shall transmit with the order of commitment  
7 copies of a diagnostic psychological evaluation and educational assessment if  
8 one has been administered, copies of the case report, all other psychological  
9 and medical reports, restitution orders, any request for postadjudication  
10 notice that has been submitted by a victim and any other documents or records  
11 pertaining to the case requested by the department of juvenile corrections or  
12 an institution or agency. The department shall not release a juvenile from  
13 secure care before the juvenile completes the length of stay determined by  
14 the court in the commitment order unless the county attorney in the county  
15 from which the juvenile was committed requests the committing court to reduce  
16 the length of stay. The department may temporarily escort the juvenile from  
17 secure care pursuant to section 41-2804, may release the juvenile from secure  
18 care without a further court order after the juvenile completes the length of  
19 stay determined by the court or may retain the juvenile in secure care for  
20 any period subsequent to the completion of the length of stay in accordance  
21 with the law.

22 M. Written notice of the release of any juvenile pursuant to  
23 subsection L of this section shall be made to any victim requesting notice,  
24 the juvenile court that committed the juvenile and the county attorney of the  
25 county from which the juvenile was committed.

26 N. Notwithstanding any law to the contrary, if a person is under the  
27 supervision of the court as an adjudicated delinquent juvenile at the time  
28 the person reaches eighteen years of age, treatment services may be provided  
29 until the person reaches twenty-one years of age if the court, the person and  
30 the state agree to the provision of the treatment and a motion to transfer  
31 the person pursuant to section 8-327 has not been filed or has been  
32 withdrawn. The court may terminate the provision of treatment services after  
33 the person reaches eighteen years of age if the court determines that any of  
34 the following applies:

- 35 1. The person is not progressing toward treatment goals.
- 36 2. The person terminates treatment.
- 37 3. The person commits a new offense after reaching eighteen years of  
38 age.
- 39 4. Continued treatment is not required or is not in the best interests  
40 of the state or the person.

41 O. On the request of a victim of an act that may have involved  
42 significant exposure as defined in section 13-1415 or that if committed by an  
43 adult would be a sexual offense, the prosecuting attorney shall petition the  
44 adjudicating court to require that the juvenile be tested for the presence of  
45 the human immunodeficiency virus. If the victim is a minor the prosecuting



1 attorney shall file this petition at the request of the victim's parent or  
2 guardian. If the act committed against a victim is an act that if committed  
3 by an adult would be a sexual offense or the court determines that sufficient  
4 evidence exists to indicate that significant exposure occurred, it shall  
5 order the department of juvenile corrections or the department of health  
6 services to test the juvenile pursuant to section 13-1415. Notwithstanding  
7 any law to the contrary, the department of juvenile corrections and the  
8 department of health services shall release the test results only to the  
9 victim, the delinquent juvenile, the delinquent juvenile's parent or guardian  
10 and a minor victim's parent or guardian and shall counsel them regarding the  
11 meaning and health implications of the results.

12 P. If a juvenile has been adjudicated delinquent for an offense that  
13 if committed by an adult would be a felony, the court shall provide the  
14 department of public safety Arizona automated fingerprint identification  
15 system established in section 41-2411 with the juvenile's fingerprints,  
16 personal identification data and other pertinent information. If a juvenile  
17 has been committed to the department of juvenile corrections the department  
18 shall provide the fingerprints and information required by this subsection to  
19 the Arizona automated fingerprint identification system. If the juvenile's  
20 fingerprints and information have been previously submitted to the Arizona  
21 automated fingerprint identification system the information is not required  
22 to be resubmitted.

23 Q. Access to fingerprint records submitted pursuant to subsection P of  
24 this section shall be limited to the administration of criminal justice as  
25 defined in section 41-1750. Dissemination of fingerprint information shall  
26 be limited to the name of the juvenile, juvenile case number, date of  
27 adjudication and court of adjudication.

28 R. If a juvenile is adjudicated delinquent for an offense that if  
29 committed by an adult would be a misdemeanor, the court may prohibit the  
30 juvenile from carrying or possessing a firearm while the juvenile is under  
31 the jurisdiction of the department of juvenile corrections or the juvenile  
32 court.

33 S. If a juvenile is adjudicated delinquent for a violation of section  
34 13-1602, subsection A, paragraph 5, the court shall order the juvenile to pay  
35 a fine of at least three hundred dollars but not more than one thousand  
36 dollars. Any restitution ordered shall be paid in accordance with section  
37 13-809, subsection A. The court may order the juvenile to perform community  
38 restitution in lieu of the payment for all or part of the fine if it is in  
39 the best interests of the juvenile. The amount of community restitution  
40 shall be equivalent to the amount of the fine by crediting any service  
41 performed at a rate of ten dollars per hour. If the juvenile is convicted of  
42 a second or subsequent violation of section 13-1602, subsection A, paragraph  
43 5 and is ordered to perform community restitution, the court may order the  
44 parent or guardian of the juvenile to assist the juvenile in the performance  
45 of the community restitution if both of the following apply:

1           1. The parent or guardian had knowledge that the juvenile intended to  
2 engage in or was engaging in the conduct that gave rise to the violation.

3           2. The parent or guardian knowingly provided the juvenile with the  
4 means to engage in the conduct that gave rise to the violation.

5           T. For the purposes of this section:

6           1. "First time felony juvenile offender" means a juvenile who is  
7 adjudicated delinquent for an offense that would be a felony offense if  
8 committed by an adult.

9           2. "Repeat felony juvenile offender" means a juvenile to whom both of  
10 the following apply:

11           (a) Is adjudicated delinquent for an offense that would be a felony  
12 offense if committed by an adult.

13           (b) Previously has been adjudicated a first time felony juvenile  
14 offender.

15           3. "Sexual offense" means oral sexual contact, sexual contact or  
16 sexual intercourse as defined in section 13-1401.

17           Sec. 3. Section 8-352, Arizona Revised Statutes, is amended to read:

18           8-352. Intensive probation; evaluation; criteria; limit;  
19 conditions

20           A. A juvenile probation officer shall prepare a disposition summary  
21 report for every juvenile who has been adjudicated of a delinquent act or of  
22 a technical violation of probation.

23           B. The juvenile probation officer shall evaluate the needs of the  
24 juvenile and the juvenile's risk to the community, including the nature of  
25 the offense, the delinquent history of the juvenile, ~~and~~ the juvenile's  
26 history of referrals and adjustments AND THE RECOMMENDATION OF THE JUVENILE'S  
27 PARENTS. If the nature of the offense and the prior delinquent history of  
28 the juvenile indicate that the juvenile should be included in an intensive  
29 probation program pursuant to supreme court guidelines for juvenile intensive  
30 probation, the juvenile probation officer may recommend to the court that the  
31 juvenile be granted intensive probation.

32           C. After reviewing the juvenile's prior record, the facts and  
33 circumstances of the current delinquent act or technical violation of  
34 probation and the disposition summary report, the court may grant the  
35 juvenile a period of intensive probation.

36           D. When granting intensive probation the court shall set forth on the  
37 record the factual reasons for using the disposition.

38           E. Intensive probation shall be conditioned on the juvenile:

39           1. Participating in one or more of the following throughout the term  
40 of intensive probation for not less than thirty-two hours each week:

41           (a) School.

42           (b) A court ordered treatment program.

43           (c) Employment.

44           (d) Supervised community restitution work.

1           2. Paying restitution and probation fees except that the inability to  
2 pay probation fees or restitution does not prohibit participation in the  
3 intensive probation program.

4           3. Remaining at a place of residence at all times except to attend  
5 school, work or treatment, to perform community restitution or to participate  
6 in some activity, as specifically allowed in each instance by the supervising  
7 juvenile probation officer, or if in the direct company of a parent, guardian  
8 or custodian, as approved by the juvenile probation officer.

9           4. Allowing administration of drug and alcohol tests as directed by a  
10 juvenile probation officer.

11          5. Meeting any other conditions imposed by the court, including  
12 electronic monitoring, to meet the needs of the juvenile or to limit the  
13 risks to the community.

14          F. Probation fees shall be deposited in the juvenile probation fund  
15 established pursuant to section 12-268.

16          Sec. 4. Section 8-354, Arizona Revised Statutes, is amended to read:

17          8-354. Modification of supervision

18          A. The juvenile probation officer shall periodically examine the needs  
19 of each juvenile who is granted intensive probation and the risks of  
20 modifying the level of supervision of the juvenile. The court may at any  
21 time modify the placement or the level of supervision of a juvenile who is  
22 granted intensive probation.

23          B. The court may issue a warrant for the arrest of a juvenile who is  
24 granted intensive probation. If the juvenile commits an additional offense  
25 or violates a condition, the court ~~may~~ **SHALL** revoke intensive probation at  
26 any time before the expiration or termination of the period of intensive  
27 probation and hold disposition of the juvenile in accordance with section  
28 8-341.